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ENGROSSED SUBSTITUTE HOUSE BILL 1005

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State of Washington

57th Legislature

2002 Regular Session

By House Committee on Technology, Telecommunications & Energy  
(originally sponsored by Representatives Morris and Lantz)

Read first time 02/05/2002. Referred to Committee on .

1 AN ACT Relating to public utility rights of way on aquatic lands;  
2 amending RCW 79.90.470; adding a new section to chapter 79.90 RCW; and  
3 creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that local public  
6 utilities provide essential services to all of the residents of the  
7 state and that the construction and improvement of local utility  
8 infrastructure is critical to the public health, safety, and welfare,  
9 community and economic development, and installation of modern and  
10 reliable communication and energy technology. The legislature further  
11 finds that local utility lines must cross state-owned aquatic lands in  
12 order to reach all state residents and that, for the benefit of such  
13 residents, the state should permit the crossings, consistent with all  
14 applicable state environmental laws, in a nondiscriminatory, economic,  
15 and timely manner. The legislature further finds that this act and the  
16 valuation methodology in section 3 of this act applies only to the uses  
17 listed in section 2 of this act, and does not establish a precedent for  
18 valuation for any other uses on state-owned aquatic lands.

1       **Sec. 2.** RCW 79.90.470 and 1984 c 221 s 5 are each amended to read  
2 as follows:

3       (1) The use of state-owned aquatic lands for public utility lines  
4 owned by a governmental entity shall be granted ((without charge)) by  
5 an agreement, permit, or other instrument if the use is consistent with  
6 the purposes of RCW 79.90.450 through 79.90.460 and does not obstruct  
7 navigation or other public uses. The department may recover only its  
8 reasonable direct administrative costs incurred in processing and  
9 approving the request or application, and reviewing plans for  
10 construction of public utility lines. For purposes of this section,  
11 "direct administrative costs" means the cost of hours worked directly  
12 on an application or request, based on salaries and benefits, plus  
13 travel reimbursement and other actual out-of-pocket costs. Direct  
14 administrative costs recovered by the department must be deposited into  
15 the resource management cost account. Use for public parks or public  
16 recreation purposes shall be granted without charge if the aquatic  
17 lands and improvements are available to the general public on a first-  
18 come, first-served basis and are not managed to produce a profit for  
19 the operator or a concessionaire. The department may lease state-owned  
20 tidelands that are in front of state parks only with the approval of  
21 the state parks and recreation commission. The department may lease  
22 bedlands in front of state parks only after the department has  
23 consulted with the state parks and recreation commission.

24       (2) The use of state-owned aquatic lands for local public utility  
25 lines owned by a nongovernmental entity will be granted by easement if  
26 the use is consistent with the purpose of RCW 79.90.450 through  
27 79.90.460 and does not obstruct navigation or other public uses. The  
28 total charge for the easement will be determined under section 3 of  
29 this act.

30       (3) Nothing in this section limits the ability of the department to  
31 obtain payment for commodity costs, such as lost revenue from renewable  
32 resources, resulting from the granted use of state-owned aquatic lands  
33 for public utility lines.

34       NEW SECTION. **Sec. 3.** A new section is added to chapter 79.90 RCW  
35 to read as follows:

36       (1) Until July 1, 2008, the charge for the term of an easement  
37 granted under RCW 79.90.470(2) will be determined as follows and will  
38 be paid in advance upon grant of the easement:

1 (a) Five thousand dollars for individual easement crossings that  
2 are no longer than one mile in length;

3 (b) Twelve thousand five hundred dollars for individual easement  
4 crossings that are more than one mile but less than five miles in  
5 length; or

6 (c) Twenty thousand dollars for individual easement crossings that  
7 are five miles or more in length.

8 (2) The charge for easements under subsection (1) of this section  
9 must be adjusted annually by the rate of yearly increase in the most  
10 recently published consumer price index, all urban consumers, for the  
11 Seattle-Everett SMSA, over the consumer price index for the preceding  
12 year, as compiled by the bureau of labor statistics, United States  
13 department of labor for the state of Washington rounded up to the  
14 nearest fifty dollars.

15 (3) The term of the easement is thirty years.

16 (4) In addition to the charge for the easement under subsection (1)  
17 of this section, the department may recover its reasonable direct  
18 administrative costs incurred in receiving an application for the  
19 easement, approving the easement, and reviewing plans for and  
20 construction of the public utility lines. For the purposes of this  
21 subsection, "direct administrative costs" means the cost of hours  
22 worked directly on an application, based on salaries and benefits, plus  
23 travel reimbursement and other actual out-of-pocket costs. Direct  
24 administrative costs recovered by the department must be deposited into  
25 the resource management cost account.

26 (5) Applicants under RCW 79.90.470(2) providing a residence with an  
27 individual service connection for electrical, natural gas, cable  
28 television, or telecommunications service are not required to pay the  
29 charge for the easement under subsection (1) of this section but shall  
30 pay administrative costs under subsection (4) of this section.

31 (6) A final decision on applications for an easement must be made  
32 within one hundred twenty days after the department receives the  
33 completed application and after all applicable regulatory permits for  
34 the aquatic easement have been acquired. This subsection applies to  
35 applications submitted before the effective date of this section, as  
36 well as to applications submitted on or after the effective date of  
37 this section. Upon request of the applicant, the department may reach  
38 a decision on an application within sixty days and charge an additional  
39 fee for an expedited processing. The fee for an expedited processing

1 is the greater of: (a) Ten percent of the combined total of the  
2 easement charge and direct administrative costs; or (b) the cost of  
3 staff overtime, calculated at time and one-half, associated with the  
4 expedited processing.

5 NEW SECTION. **Sec. 4.** If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

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